IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.14026 of 2006
Date of decision: 27.11.2006

M/s Bhagwan Steel Industries, Amloh Road, Mandi Gobindgarh.

---Petitioner.

Vs.

Excise and Taxation Commissioner, Chandigarh and others.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. S.S. Swaich, Advocate for the petitioner.

Mr. Amol Rattan Singh, Addl. A.G., Punjab.

JUDGMENT:

This petition has been filed for quashing the recovery notice dated 20th July, 2006 (Annexure P-10) and order of attachment of property dated 19th July, 2005.

Case of the petitioner is that account books of the petitioner-firm were seized by the assessing authority in September, 2000 and were not returned inspite of repeated requests by the petitioner. Prior to that, assessment upto the assessment year 1997-98 had been completed and returns had been filed upto the first quarter of 2000-01 and since then, the firm was lying closed and books were in the custody of the assessing officer i.e. Excise and Taxation Officer (respondent No.4). Assessments for the assessment years 1998-99, 1999-2000 and 2000-01 had not been completed.

On receiving of notice dated 06.12.2004 under Section 11 of the Punjab Geneal Sales Tax Act, 1948, the petitioner filed civil suit in February 2005, wherein, the respondent took the stand that assessments for the assessment years

1998-99, 1999-2000 and 2000-01 had been completed by 30th December, 2004 and additional amount of tax of Rs.8,24,774/- was due against the petitioner. However, the case of the petitioner is that assessment orders were never supplied and recovery proceedings were initiated.

Stand of the respondent is that after due notice to the petitioner, assessment proceedings were finalized and after the petitioner's refusal to accept notice, the same was pasted at a conspicuous place of business of the petitioner. Since the petitioner failed to pay the tax due, proceedings for recovery, had to be initiated.

Learned counsel for the State submits that books of account were not traceable and that except for approaching this Court in August, 2006, the petitioner had not taken any step after seizure of the books of account in the year 2000 and as the petition being highly belated, the plea of not returning the books of account has not to be entertained, at this stage. He further submitted that though no record is available to support that seized books of account were immediately returned to the petitioner, but this is what has been informed by the then assessing authority who has since retired.

We have heard learned counsel for the parties.

It remains undisputed that the petitioner has approached this Court after six years of the alleged seizure of books of account and the petitioner did not participate in assessment proceedings before the assessing authority, inspite of substituted service of notice, as claimed by the respondents. Admittedly, the petitioner learnt about assessments having been completed from the written statement filed in the suit. The petitioner did not take any steps, inspite of this, till filing of this petition.

In view of above circumstances, we cannot accept the plea of the petitioner that recovery proceedings be quashed and direction for return of books be given. However, without expressing any opinion on the question whether the petitioner received a copy of assessment order, we are of the view that the

petitioner should have an opportunity of preferring an appeal against the Assessment Order.

Learned counsel for the State has fairly stated that if appeal is filed within fifteen days from today, objection of limitation will not be taken.

We also accept the prayer made on behalf of the petitioner that proceedings for recovery may remain suspended, for a period of 15 days, to enable the petitioner to file an appeal and till the decision of stay application, in case the appeal is filed within fifteen days.

The writ petition is disposed of in the manner indicated above.

(ADARSH KUMAR GOEL)
JUDGE

November 27, 2006
ashwani

(RAJESH BINDAL)
JUDGE